

DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

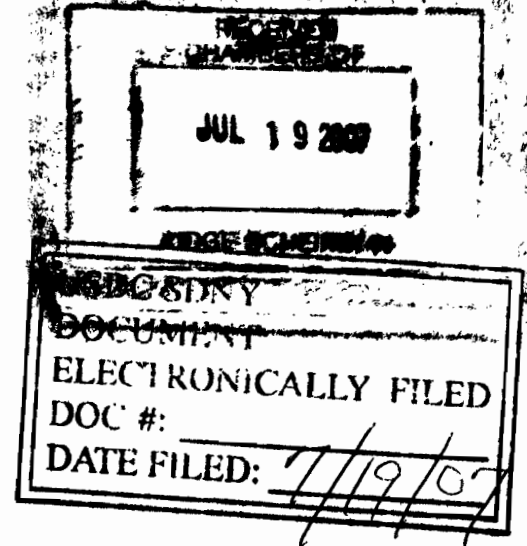


ROBERT M. MORGENTHAU
DISTRICT ATTORNEY

July 19, 2007

Honorable Shira A. Scheindlin
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Via facsimile (212) 805-7920



Re: Bonge, et al. v. City of New York, et al.
07 Civ. 4601 (SAS)(GWG)

Dear Judge Scheindlin:

I am an Assistant District Attorney in the Special Litigation Bureau of the New York County District Attorney's Office ("DANY"). As such, I represent DANY and its employees in civil discovery matters. Specifically, I am assigned to handle any civil discovery requests or issues related to the above-captioned matter.

On July 17, 2007, sometime after 3:00 p.m., I received a so-ordered subpoena returnable before Your Honor on July 20, 2007 at 4:30 p.m. The subpoena, issued by the Assistant Corporation Counsel Hillary Frommer, was served upon DANY via facsimile. It commands DANY, a non-party, to produce "documents concerning the search warrants obtained on January 29, 2007 for 77 E. 3rd Street, New York, New York, specifically, any and all affidavits or applications for the search warrant, the search warrants, and the minutes of any and all hearings held regarding the warrants."¹

It is my understanding and the practice of DANY, that upon receipt of a subpoena, the Federal Rules of Civil Procedure, Rule 45, §§(c)(2)(B) and (d)(2) provide DANY with an opportunity to object to a subpoena by way of letter to the requesting attorney. The statute does not appear to make a distinction between a so-ordered and an attorney issued subpoena. Thus, I would like an opportunity to prepare an objection letter in accordance with Federal Rule 45, but I respectfully request more time, for the reasons detailed below.

Importantly, as of this writing, the case files containing the requested documents cannot be located by the Assistant District Attorney ("ADA") who handled the matter,

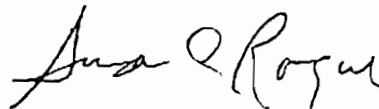
¹ Copy of subpoena attached.

Request granted. Non-party New York Co. District Attorney may have until July 31, 2007 to oppose the subpoena. So Ordered: Judge Scheindlin 7/19/07

Robert Ferrari. No other copy of the approved search warrant affidavit is on file at DANY, nor were the minutes of the sealed hearing ever transcribed. Further, future compliance with the subpoena may be difficult because the search warrant affidavit likely contains sensitive information and identifies confidential sources. Still, ADA Ferrari continues to search for the case file with the belief that it will be eventually located, allowing for a more detailed objection in the near future. It is difficult to compose an objection letter or to possibly comply with the request without the benefit of an examination of the documents sought.

Finally, shortly after receiving the subpoena, I telephoned Ms. Frommer and informed her that I have a scheduled medical procedure on July 20, 2007. The medical procedure is scheduled for 9:30 a.m., requires general anesthesia and requires that I rest for the remainder of the day. Therefore, I am not able to appear on July 20, 2007 at 4:30 p.m. as called for in the subpoena. It is my hope that for all of the aforementioned reasons, Your Honor will allow me the opportunity to respond to the so-ordered subpoena on a future date. If the Court prefers DANY's objections be specified by way of a motion to quash rather than a Rule 45 letter, I will certainly comply. Thank you for your consideration in this matter.

Sincerely,



Susan C. Roque (SR8729)
Assistant District Attorney
Special Litigation Bureau
(212) 335-9209 telephone
(212) 335-4390 facsimile

cc: Hillary Frommer, Esq.
via facsimile (212) 788-9776

127884123

02:57:42 p.m. 07-17-2007

3/3

10:43:44 a.m. 07-13-2007

4/4

2127884123

AO 88 (11/91) Subpoena in a Civil Case

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

Steve Borge, et al.

SUBPOENA IN A CIVIL CASE

v.

CASE NUMBER: 07 Civ. 4601 (SAS)(GWG)

City of New York et al.

TO: Office of the District Attorney of New York County
One Hogan Place
New York, NY 10013

[] YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

[] YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case

DATE AND TIME

[X] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents: Documents concerning the search warrants obtained on January 29, 2007 for 77 E. 3rd Street, New York New York, specifically, any and all affidavits or applications for the search warrant, the search warrants, and the minutes of any and all hearings held regarding the warrants. If the minutes have not been transcribed, provide the date, Court Part(s) and name of the court reporter(s) who were present at the hearings, at the place, date, and time specified below (list documents or objects):

PLACE

The United States District Court for the Southern District of New York
Courtroom 15C
500 Pearl Street
New York, New York 10007

DATE AND TIME

July 20, 2007 at 4:30 p.m.

[] YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

TESTING OFFICER'S SIGNATURE AND TITLE (INDICATING A FORMER FOR A COURT OR DEPENDANT)

DATE

The Honorable Shira A. Scheindlin
United States District Judge

TESTING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

The Honorable Shira A. Scheindlin
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

July 13, 2007

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)